IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 134 of 2005.

Date of decision: 03.01.2006.

Magji Ram ... Petitioner

Versus

Piar Chand & Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

For the respondents: Mr. Naresh Kaul, Advocate.

V.M. Jain, J. (Oral):

This revision petition has been filed by defendant – petitioner Magji Ram against the order dated 1.6.2004 passed by the Additional District Judge, whereby the application under Section 5 of the Limitation Act filed by the petitioner was dismissed and the appeal was also dismissed as barred by time.

The facts which are relevant for the decision of the present petition are that Jagdish Ram, plaintiff, had filed a suit for possession against three defendants, namely Magji, Galara and Megh Raj sons of Khazana Ram. The said suit was decreed ex parte, vide judgment and decree dated 20.1.2000. Aggrieved against the same, defendant No.1 Magji Ram had filed an appeal. Since the said appeal was barred by

[1]Whether reporters of Local Papers may be allowed to see the judgment?

limitation, an application under Section 5 of the Limitation Act was filed, seeking condonation of delay in filing the appeal.

After hearing both sides and perusing the record, the learned Additional District Judge, dismissed the application under Section 5 of the Limitation Act, holding that the defendant – appellant had failed to make out sufficient cause for condoning the delay in filing the appeal. Resultantly, the application under Section 5 of the Limitation Act was dismissed and the appeal was also dismissed as barred by time. Aggrieved against the same, Magji Ram, defendant, filed the present revision petition in this Court.

Notice was ordered to be issued to the respondents and the records were also requisitioned.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to be dismissed. As referred to above, the judgment and decree passed by the trial Court is dated 20.1.2000, whereas the appeal was filed by defendant – appellant Magji Ram only on 12.6.2002 i.e. after the lapse of more than two years and four months. The only ground taken in the application under Section 5 of the Limitation Act, seeking condonation of the delay in filing the appeal, was that it was only in the month of June, 2002 that he came to know about the judgment and decree dated 20.1.2000 passed by the trial Court and immediately he applied for the copies and had filed the appeal on 12.6.2002. This plea taken by the defendant – appellant was not accepted by the learned Additional District Judge considering that in the suit defendant No.1 was duly served and was represented by his general attorney before the trial Court and thereafter, he did not appear and he was proceeded against ex parte. It

was also found that the learned counsel had filed the Power of Attorney on behalf of defendants No. 2 and 3, who are the real brothers of defendant – appellant Magji Ram and no written statement was filed and their defence were struck of under the orders of the Court. It was found that defendant - Appellant Magji Ram could not be allowed to urge that he came to know about the ex parte judgment and decree dated 20.1.2000 only in June, 2002. It was found that defendant – appellant Magji Ram very well knew about the pendency of the suit against him and if he had not contested the suit and was proceeded ex parte, he could not be allowed to urge that he did not know about the judgment and decree dated 20.1.2000 passed by the trial Court.

In my opinion, the view taken by the learned Addigtional District Judge is perfectly in accordance with law and no fault could be found with the same. I have myself gone through the trial Court file with the assistance of the learned counsel for the parties. A perusal of the trial Court record would show that it was on 8.1.1997 that the general attorney of defendant – appellant Magji Ram had put in appearance before the trial Court and the case was adjourned to 13.5.1997 for the service of defendants No. 2 and 3 and on 13.5.1997, the general attorney of defendant No.1 was again present, but defendants No. 2 and 3 were not served and they were ordered to be served for 13.10.1997. The trial Court record would further show that on 13.10.1997, the learned counsel had put in appearance on behalf of defendants No. 2 and 3, but no one had appeared on behalf of defendant – appellant Magji Ram, and he was proceed against ex parte. The general power of attorney executed by the defendant – appellant in favor of his son Bhuvnesh Kumar is available on the trial Court record. Thus, it will be clear that the defendant – appellant

Magji Ram was very much in the know of the filing of the suit by Jagdish Ram against him and his brothers and in the said suit his general attorney had appeared twice before the trial Court, but later on, he did not appear and was proceeded against ex parte.

Keeping in view the facts and circumstances of the present case, referred to above, in my opinion, no fault could be found with the order dated 1.6.2004 passed by the learned Additional District Judge, while dismissing the application under Section 5 of the Limitation Act, especially when defendant – appellant Magji Ram had miserably failed to make out sufficient cause for condoning the delay of more than two years and four months in filing the appeal.

In view of the above, finding no merit in this revision petition, the same is hereby dismissed.

(V.M. Jain),
Judge

January 03, 2006
(BSS)